

## Message

**From:** Mikalian, Charles [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1216B33DD74E4765879B195C82564527-CMIKALIA]  
**Sent:** 8/28/2017 9:00:14 PM  
**To:** Andrew Steinberg [andrew.steinberg@lepetomaneinc.com]  
**CC:** Polly A. Synk (synkp@michigan.gov) [synkp@michigan.gov]; Berkoff, Michael [berkoff.michael@epa.gov]  
**Subject:** FW: Revised Draft AOC Regarding Panelyte Property (CONFIDENTIAL SETTLEMENT COMMUNICATION)  
**Attachments:** BFPP Panelyte 062117 cvm.pdf; 4830-0889-9661.1 - AUGUST 21, 2017 REVISED DRAFT AOC (CITY OF KALAMAZOO)....docx

Andy,

Attached are the City's comments on the draft BFPP AOC. The United States' team is considering these comments. I am going on vacation until September 6, after which we hope to compile our internal comments. After that, we will likely need a conference call with the City before the U.S. generates a responsive redline.

The Trust probably only needs to review the Work Section. We don't view the comments as too drastic, although we need some clarification from the City. We will discuss the potential changes to this Section with the Trust in the near future.

Please send any comments or concerns the Trust may have to Michael and I. We will make sure to consider them along with other U.S. internal comments.

Thanks, Chuck

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**From:** Gilezan, Grant [mailto:GGilezan@dykema.com]  
**Sent:** Monday, August 21, 2017 11:50 AM  
**To:** Mikalian, Charles <mikalian.charles@epa.gov>  
**Cc:** Robinson, Clyde <robinsonc@kalamazoocity.org>; Kneas, John <KneasJ@kalamazoocity.org>; Kisscorni, Jerome <kisscornij@kalamazoocity.org>; Chamberlain, Jeff <chamberlainj@kalamazoocity.org>; Kemmer, Eric <KemmerE@kalamazoocity.org>; Bruce Merchant (bemerchant@gmail.com) <bemerchant@gmail.com>  
**Subject:** [SPAM] Revised Draft AOC Regarding Panelyte Property (CONFIDENTIAL SETTLEMENT COMMUNICATION)

## **CONFIDENTIAL SETTLEMENT COMMUNICATION**

Hello, Chuck.

As a follow up to John's note below, I am forwarding as attachments two versions of the same revised draft AOC, including a PDF version showing all changes to US EPA's prior draft that are requested by the City, and a Word version that incorporates all of those changes into a new clean copy of the revised draft document. A brief guide regarding the bases of the City's changes follows:

I. Jurisdiction And General Provisions – Added the City itself as a party (in addition to the BRA) because the City will be carrying out certain work; and deleted reference to response cost reimbursement, as it is not part of the AOC scope.

II. Parties Bound – Added the City for reason noted above.

III. Definitions – Revised "Existing Contamination" to make sure the City and BRA do not have any potential liability for contamination that neither released or exacerbated; and expanded "Parties" and "Work" to include the City.

IV. Statement Of Facts – Changed references to “City” as defined term.

V. Determinations - Added the City for reason noted above.

VII. Designation Of Project Coordinator And Remedial Project Manager - Added the City for reason noted above.

VIII. Work To Be Performed - Added the City for reason noted above; clarified limited City tasks under the Periodic Review Support Plan; clarified that the City has a coordinating role, but the Trust has the obligation, as owner, to implement institutional controls at OU1; clarified the City’s site clearing and material management responsibilities at the Panelyte property; clarified the City’s role regarding the Traffic Management Plan; and referenced Dispute Resolution in connection with decision-making regarding deliverables.

IX. Property Requirements – Added the City for reason noted above; tied access rights to completion of response actions at OU1; eliminated redundant, overbroad paraphrasing of access rights specifically set forth later; modified use restrictions to the minimum necessary to supplement areas not already covered by access rights and to maximize use of the Panelyte property consistent with OU1 related uses and residual contamination present at the Panelyte property; and clarified that the City and BRA are not responsible for procuring access to third party properties.

X. Access To Information - Added the City for reason noted above; and included reference to provisions in AOC regarding privileged and protected claims.

XI. Record Retention - Added the City for reason noted above.

XII. Compliance With Other Laws - Added the City for reason noted above.

XIV. Dispute Resolution - Added the City for reason noted above.

XV. Force Majeure - Added the City for reason noted above.

XVI. Certification – Added the City for reason noted above.

XVIII. Reservations Of Rights By United States - Added the City for reason noted above.

XIX. Covenants By Purchaser And City - Added the City for reason noted above.

XX. Other Claims - Added the City for reason noted above.

XXI. Effect Of Settlement Contribution - Added the City for reason noted above.

XXIII. Indemnification - Added the City for reason noted above; and deleted City/BRA indemnification responsibilities due to inability to make such a non-appropriated commitment.

XXIV. Insurance – Deleted because City/BRA do not have such insurance (rather, they are self-insured) and the City will be undertaking in-kind work with City resources, so it cannot rely on the insurance of a contractor.

XXV. Modification - Added the City for reason noted above.

XXVI. Notice Of Completion Of Work - Added the City for reason noted above; and added reference to Dispute Resolution regarding decision-making.

Signatures - Added the City for reason noted above.

Please contact me when you are ready to discuss the revised draft AOC. Thank you for your attention to this matter.

Best regards,  
Grant

**DYKEMA**

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**From:** Kneas, John [<mailto:KneasJ@kalamazoocity.org>]  
**Sent:** Friday, August 18, 2017 4:36 PM  
**To:** [mikalian.charles@epa.gov](mailto:mikalian.charles@epa.gov)  
**Cc:** Gilezan, Grant; Robinson, Clyde  
**Subject:** BFPP

Chuck:

In response to your voice-mail from yesterday, Grant is working on further revisions to the BFPP from the ones he made earlier that the city reviewed in conference call with him this week. I was unable to participate because of my court schedule. With my upcoming retirement on August 31 (I will be back part time in October to assist our economic development staff with Brownfield Redevelopment Authority matters) Grant and Clyde will be the lead attorneys in finalizing the BFPP and moving forward with OUI and Panelyte matters. I will continue to have some involvement with potential BRA ownership of Panelyte and related matters, however.

Enjoy your upcoming vacation and it has been a pleasure working with you to reach a workable and viable solution for the Allied Paper/Panelyte sites.

John

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